

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

OHIO SECURITY INSURANCE)	
COMPANY,)	
)	
Petitioner,)	Case No. 18-cv-
)	
v.)	
)	
BOLINGBROOK HOSPITALITY LLC,)	
)	
Respondent,)	

PETITION FOR APPOINTMENT OF AN UMPIRE

NOW COMES the Petitioner, OHIO SECURITY INSURANCE COMPANY (“Ohio Security”), by and through its undersigned counsel, HeplerBroom, LLC and pursuant to 28 U.S.C. § 2201 and Fed. R. Civ. P. 57 hereby submits the following petition for the judicial nomination of an umpire to preside over the pending property insurance appraisal between Petitioner, Ohio Security, and Respondent, BOLINGBROOK HOSPITALITY LLC (“Bolingbrook”):

Parties & Jurisdiction

1. At all times relevant, Ohio Security was a corporation duly organized and existing under the laws of the States of New Hampshire and Massachusetts, with its principal place of business located at 62 Maple Avenue in Keene, New Hampshire. (A true and accurate copy of the Illinois Department of Insurance records is attached and incorporated as Exhibit A).

2. At all times relevant, Bolingbrook was a corporation organized and existing under the laws of the State of Illinois, with its principal place of business located at 502 Pratt Ave N in Schaumburg, Illinois. The sole member of Bolingbrook, Narain Gulabani, is located at 85167 Hampton Circle in Naperville, Illinois. (True and accurate copies of the Illinois Secretary of State records are attached and incorporated as Exhibit B).

3. By virtue of its incorporation and principal place of business being in New Hampshire, Petitioner is a citizen of the State of New Hampshire. By virtue of its incorporation and principal place of business being in Illinois and its sole member residing in Illinois, Respondent is a citizen of the State of Illinois. In the underlying insurance claim and appraisal at issue, the Respondent seeks at least \$100,000 in policy benefits, exclusive of interest and costs, and therefore, complete diversity exists between the parties pursuant to 28 U.S.C. § 1332(a)(1). (See, Exhibits A and B; *see also* Affidavit of Appraiser Hinthorne, attached and incorporated as Exhibit C, ¶5).

Insurance Claim & Appraisal Demand

4. On or about April 10, 2017, Bolingbrook's property located at 225 W. Frontgate Road in Bolingbrook, Illinois was allegedly damaged by hail.

5. On or about May 3, 2017, Bolingbrook reported the property insurance claim for hail damage to Ohio Security under Policy No. BKS (17) 56-99-78-22 ("Policy"), initiating Claim No. 23296031 ("Claim"). (See, Loss Acknowledgement email to Peter Myers, attached and incorporated as Exhibit D).

6. On or around July 25, 2017, following an inspection and coverage investigation by Donan Engineering Co., Inc. and pursuant to the terms and conditions of the Policy, Ohio Security accepted coverage for scattered hail damage to Bolingbrook's roof but did not issue payment since the estimated damages were under the Policy's \$5,000.000 deductible. (See email from James Fisher of Liberty Mutual to Chris Miller at Safe Harbors PA and Estimate, attached and incorporated as Exhibit E).

7. On October 13, 2017, Bolingbrook submitted a written demand for appraisal of the "amount of loss" of its Claim, as provided for in the Policy and nominated Andrew Pozniak as its

appraiser (“Appraiser Pozniak”). (See Demand for Appraisal, attached and incorporated as Exhibit F).

8. On October 25, 2017, Ohio Security accepted Bolingbrook’s demand for appraisal of the Claim and nominated Erik Hinthorne of Envista Forensics as its appraiser (“Appraiser Hinthorne”). (See email from Natalia Schwartz, Operations Assistant at Envista Forensics, to James Fisher at Liberty Mutual Insurance Company attached and incorporated as Exhibit G).

Policy Language & Umpire Impasse

9. At all times relevant, the operative appraisal language of the Policy provided as follows:

PROPERTY CONDITIONS

This Property Coverage Part is subject to the Common Policy Conditions, any other conditions in any Property Coverage Forms, and the following conditions.

* * *

E. LOSS CONDITIONS

* * * * *

2. Appraisal.

If we and you disagree on the value of the property or the amount of loss, either way make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. **If they cannot (wee, either may request that selection be made by a judge of a court having jurisdiction.** The appraisers will state separately the value of the property and amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding.

Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we will still retain our right to deny the claim.

(See, Certified Copy of the Policy, pg. 89, attached and incorporated as Exhibit H).

10. On November 16, 2017, Appraiser Hinthorne contacted his counterpart, Appraiser Pozniak, in order to schedule the joint appraisal inspection and attempt to agree on an umpire per the terms of the Policy. (Ex. C, ¶3)

11. The appraisers were able to schedule the joint inspection for March 23, 2018, but unable to agree on an umpire in advance of the same. (Ex. C, ¶4)

12. On or around May 24, 2018, Appraiser Pozniak advised Appraiser Hinthorne that Bolingbrook would be requesting that a Court appoint the umpire. (Ex. C, ¶6)

13. After multiple attempts, the appraisers are unable to agree on an umpire, and Ohio Security and its appraiser respectfully request that the “selection be made by a judge of a court having jurisdiction.” (Ex. H, pg. 89)

14. Ohio Security, through Appraiser Hinthorne, tenders and submits three (3) potential umpire candidates and requests that the Court select one of the following:

1. Tom Benson
Madsen, Kneppers & Associates, Inc.
(630) 768-2746
2. Richard Koziol
Wiss, Janney, Elstner Associates, Inc.
(847) 753-6475
3. Thomas Smith, AIA
TL Smith Consulting, Inc.
(877) 629-9752

WHEREFORE, pursuant to 28 U.S.C. § 2201 and Fed. R. Civ. P. 57, Petitioner, OHIO SECURITY INSURANCE COMPANY, respectfully requests and petitions this Court to appoint one of the above-identified neutrals to serve as the umpire over the appraisal demanded by

Respondent, BOLINGBROOK HOSPITALITY LLC and for any and all other relief that this Court deems necessary and just.

Respectfully submitted,

OHIO SECURITY
INSURANCE COMPANY,

By: /s/ Gordon K. Walton, Esq.
One of its Attorneys

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CERTIFICATE OF SERVICE

I, Gordon K. Walton, hereby certify that on July 9, 2018 a true and correct copy of ***Ohio Security Insurance Co.'s Petition for Appointment of an Umpire*** was electronically filed with the Clerk of Court using the CM/ECF system which will send notification of such filing to the all counsel of record who have heretofore appeared in this matter.

/s/ Gordon K. Walton